Supreme Court, U. S.
FILED
JUL 10 1980
MICHAEL RODAK, JR., CLERK

Nos. 79-1739 and 79-1743

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

INUPIAT COMMUNITY OF THE ARCTIC SLOPE,
Petitioner,
v.
ATLANTIC RICHFIELD CO., ET AL.

UNITED STATES OF AMERICA,
Petitioner,
v.
ATLANTIC RICHFIELD CO., ET AL.

On Petitions for Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

REPLY BRIEF FOR PETITIONER INUPIAT COMMUNITY OF THE ARCTIC SLOPE

O. YALE LEWIS, JR.
WILLIAM H. BLOCK
CHARLES A. GOLDMARK
WICKWIRE, LEWIS, GOLDMARK & SCHORR
500 Maynard Building
Seattle, Washington 98104
(206) 622-9603

Attorneys for the Inupiat Community of the Arctic Slope

HARRY R. SACHSE
SONOSKY, CHAMBERS & SACHSE
2030 M Street, N.W.
Washington, D.C. 20036

Of Counsel

July 10, 1980

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1739

INUPIAT COMMUNITY OF THE ARCTIC SLOPE,
Petitioner,

v.

ATLANTIC RICHFIELD CO., ET AL.

No. 79-1743

UNITED STATES OF AMERICA,
Petitioner,

v.

ATLANTIC RICHFIELD CO., ET AL.

On Petitions for Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

REPLY BRIEF FOR PETITIONER INUPIAT COMMUNITY OF THE ARCTIC SLOPE

The Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*, was intended to settle many, but not all, of

the claims of Alaskan Natives. In particular, Congress intended to avoid taking any constitutionally protected rights, and therefore deliberately excluded from extinguishment under the Act the Natives' accrued causes of action for trespass. As discussed in detail in the petition for certiorari filed by the Inupiat Community of the Arctic Slope, both the language of the Act and its legislative history confirm this view.

Respondent oil companies argue that the court of appeals was correct in holding that the Settlement Act took the Natives' accrued causes of action for trespass, even if the result is to transfer liability for the trespasses to the United States. This holding, if allowed to stand, subjects the United States to precisely the lengthy litigation and indeterminate liability that Congress wished to avoid. See Petition for Certiorari in No. 79-1739, pp. 15-21. Compare *United States* v. *Sioux Nation of Indians*, No. 79-639 decided June 30, 1980.

The trespasses committed by respondents were not innocent missteps. The vast bulk of the trespasses occurred after protests by the Natives and the United States Bureau of Indian Affairs that intrusions were trespassory, after the Secretary of Interior instituted a land freeze because title to the land was in question, and after the United States Court of Appeals for the Ninth Circuit held, in *Alaska* v. *Udall*, 420 F.2d 938 (9th Cir. 1969), *certiorari denied*, 397 U.S. 1076 (1970), that State selections could be barred by proof of Native use and occupancy. Even the leases issued by the State on tentatively approved land were "without warranty", recognizing the doubtful nature of the State's title. See Petition for Certiorari in No. 79-1739, pp. 4-7. In the face of all of the warnings and protests, the oil companies made a very deliberate choice to continue their intrusions, intrusions that, needless to say, have been extremely profitable to them.

The Inupiat Community of the Arctic Slope shares the view of the United States that liability for the damages caused by the oil companies' trespasses properly rests with the actual trespassers. The court of appeals, in holding to the contrary, has rewritten the Alaska Native Claims Settlement Act into a form never contemplated by Congress. This Court should grant the petitions for writs of certiorari to determine the meaning and intent of the Alaska Native Claims Settlement Act.

Respectfully submitted,

O. YALE LEWIS, JR.
WILLIAM H. BLOCK
CHARLES A. GOLDMARK
WICKWIRE, LEWIS, GOLDMARK & SCHORR
500 Maynard Building
Seattle, Washington 98104
(206) 622-9603

Attorneys for the Inupiat Community of the Arctic Slope

HARRY R. SACHSE
SONOSKY, CHAMBERS & SACHSE
2030 M Street, N.W.
Washington, D.C. 20036

Of Counsel

July 10, 1980

see 79

1743